

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

**PETER WEEKS, DAVID PELONZI,
MARTIN GREEN, GREG POIRIER,
PENNY FUSCO and GREG EDGECOMB,**

Appellants

v.

E-08-138 (WEEKS)
E-08-139 (PELONZI)
E-08-140 (GREEN)
E-08-141 (POIRIER)
E-08-142 (FUSCO)
E-08-143 (EDGECOMB)

TOWN OF BOURNE,

Respondent

Appellants' Attorney:

Leah Barrault, Esq.
Pyle, Rome, Lichten, Ehrenberg &
Liss-Riordan, P.C.
18 Tremont Street: Suite 500
Boston, MA 02108

Respondent's Representative:

Thomas M. Guerino
Town Administrator
Town of Bourne
24 Perry Avenue
Buzzards Bay, MA 02532

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

Pursuant to G.L. c. 31, § 2(b), the above-referenced Appellants filed the instant appeals with the Civil Service Commission (hereinafter "Commission") on June 4, 2008, appealing the action of the Town of Bourne (hereinafter "Town") in making two

promotions in the Fire Department on a temporary basis without regard to the temporary promotional procedures of the civil service law.

The Town subsequently acknowledged that the appeals were “meritorious,” and in compliance with the civil service law and applicable sections of the Personnel Administration Rules, requisitioned the current list of applicable candidates for the positions in question (Temporary Full-Time Deputy Fire Chief and Temporary Full-Time Lieutenant) from the state’s Human Resources Division (hereinafter “HRD”). (See July 9, 2008 correspondence from Town Administrator Thomas Guerino.)

On July 22, 2008, the Town sought authorization from HRD to appoint Appellant Martin Green to the position of Temporary Full-Time Deputy Fire Chief and Appellant Penny Fusco to the position of Temporary Full-Time Lieutenant. (See July 22, 2008 Correspondence from Town.) Those requests are now pending with HRD.

Pursuant to 801 CMR 1.01 (7) (g) (3), the presiding officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, *for failure of the Petitioner to state a claim upon which relief can be granted* or because of the pendency of a prior, related action in any tribunal that should first be decided. *(emphasis added)*

The basis of the Appellants’ instant appeals, in which they sought relief to have the Town comply with the applicable civil service law and rules in filling the temporary positions in question, is now moot as the Town is now complying with the applicable civil service law and rules.

If any of the Appellants included in the instant appeal are bypassed for either of the positions in question, however, they maintain a right to file a bypass appeal with the Civil

Service Commission within sixty days of being notified by HRD that the reasons for bypass were approved.

For all of the above reasons, the Appellants' appeals under the docket numbers referenced above are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, Commissioners [Marquis – Absent]) on July 24, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Leah Barrault, Esq. (for Appellants)
Thomas Guarino (Appointing Authority)
John Marra, Esq. (HRD)